

PROPOSED AMENDMENTS TO THE FAMILY COURT RULES OF PROCEDURE AND PRACTICE (FCRPP)

I. Title and Scope of Rules

FCRPP 1 Title and Scope

(1) Pursuant to KRS 403.130, these rules constitute a separate section of the civil rules and shall be known as the Kentucky Family Court Rules of Procedure and Practice. They may be cited as such, or by the abbreviation “FCRPP.”

(2) These Rules shall be applicable to the procedure and practice in all actions pertaining to dissolution of marriage; custody and child support; visitation and time-sharing; property division; maintenance; domestic violence; paternity; dependency; neglect or abuse; termination of parental rights; adoption; and status offenses, or any other matter exclusively within family law jurisdiction, except for any special statutory proceedings, which shall prevail over any inconsistent procedures set forth in these Rules.

(3) Self represented litigants shall be held to knowledge of these rules the same as parties represented by counsel.

(4) The Rules of Civil and Criminal Procedure shall apply to family law matters to the extent they are not inconsistent with these Rules.

II. Dissolutions and Property Division

FCRPP 2 Preliminary Matters

(1) Original Pleadings. All original pleadings, including forms, in a dissolution action shall be signed by the preparer, filed with the clerk of the court, and if applicable, shall include, unless otherwise ordered by the court, the following:

(a) A verified petition;

(b) Proof of service;

(c) A verified response, or a verified entry of appearance in lieu of a response;

(d) Unless waived by the court pursuant to KRS 403.180(4)(b), a verified separation agreement;

(e) The Final Verified Disclosure Statement;

(f) A verified waiver of notice of final hearing;

(g) A verified deposition or interrogatories for proof of the allegations of the petition if done without a hearing;

(h) A divorce education certificate; and

(i) A child support work sheet.

(2) Multiple Actions. When actions concerning the same subject matter are filed in different circuits, the first action filed shall be the controlling action, subject to transfer by the court of that circuit on a motion for forum non conveniens or other appropriate legal grounds. A motion for transfer shall be filed prior to or with the response. On notice to the parties, the courts in both circuits may confer concerning the proper venue.

(3) Preliminary Mandatory Disclosure. A preliminary verified disclosure statement which contains the contents of the official AOC form, AOC-238, Preliminary Verified Disclosure Statement, shall be exchanged between the parties within 45 days of service of the petition on the respondent, and objections thereto shall be exchanged 20 days thereafter but the disclosures shall not be filed in the record unless ordered by the court or required by local rule. The official AOC form, AOC-238, is available for use in compliance with this rule.

(4) Exchange of Information and Documents. The parties shall sign and return specific releases for relevant information and documents unless objected to in writing. Such releases shall contain a provision directing that any information and/or documents provided in writing to the requesting counsel or pro se party shall simultaneously be transmitted to the other counsel or pro se party, at requesting party's expense. Upon objection, the requesting party may file a motion to compel.

(5) Status Quo Orders. Without limiting a party's relief under CR 65, upon notice and opportunity to be heard, a court may enter a status quo order regarding disposition of the marital estate. Any such order may be entered on the AOC-237. A status quo order may include but not be limited to the following:

(a) Neither party shall, except as necessary to pay reasonable living expenses, incur unreasonable debt, sell, encumber, gift, bequeath or in any manner transfer, convey or dissipate any property, cash, stocks or other assets currently in their possession or in the control of another person, company, legal entity or family member without permission of the court or an agreed order signed by both parties or their attorneys.

(b) Neither party shall allow the cancellation or lapse of any health, life, automobile, casualty or disability insurance currently covering themselves or a family member or change the named beneficiaries on such policies prior to receiving permission of the court or filing an agreed order signed by both parties or their attorneys.

(6) Case Management.

(a) Mediation.

[(1)](i) The parties may agree to mediate at any time. After notice and opportunity to be heard and unless prohibited by KRS 403.036 (domestic violence), the parties may be ordered to mediate any issues before further proceedings.

[(2)](ii) Within 10 days of a final mediation, if the parties have been unable to resolve all issues, the petitioner shall file a motion for a case management conference or final hearing date, unless previously scheduled by the court.

(b) Case Management Conference.

[(1)](i) Unless notice is given to the court that a case is being mediated, within 60 days of service of the petition upon the respondent, the petitioner shall file a motion for a case management conference.

[(2)](ii) Both parties and their counsel shall attend the conference, unless otherwise ordered by the court.

[(3)](iii) Each party shall file the following documents at least 7 days prior to the conference:

[(i)](a) Any related motions; and

[(ii)](b) Any stipulations or agreements reached.

[(4)](iv) In the event of failure of a party or parties to appear at the conference, the court may, in accordance with its order, conduct a hearing in which proof may be taken or the case dismissed, as the court may determine appropriate.

(7) Trial. The trial shall not be continued except as otherwise ordered for good cause shown on the record.

(8) Temporary Motions.

(a) Any ex parte motion shall be accompanied by a supporting affidavit sufficient to state grounds for injunctive relief, and if granted, shall be set for hearing with all parties at the earliest available date.

(b) Any pendente lite motions shall be served on the opposing party and set for a hearing before the court unless otherwise agreed to by the parties.

FCRPP 3 Obtaining a Decree of Dissolution

(1) Matters Not Requiring a Trial.

(a) If the parties reach an agreement on all issues, a decree of dissolution may be obtained without a trial by filing a motion or agreed order to submit for decree of dissolution of marriage, and the parties shall further comply with any local rule requiring additional filings.

(b) A decree shall not be final until the original is signed by the court and entered by the clerk.

(c) If the parties reach an agreement on individual issues short of settling the entire case, the agreement, signed by both parties, may be submitted to the court for approval and entry.

(2) Default cases.

In all cases of default, the motion to submit for decree shall state the following:

(a) That no answer or pleadings have been received by the moving party or counsel;

(b) That the respondent was personally served and 20 days have elapsed since service, or that a warning order attorney was appointed, has filed a report and affidavit and that 50 days have elapsed since appointment of the warning order attorney; and,

(c) Shall include certification that the motion and notice of trial or submission has been served on the opposing party at the party's last known address; and if the party is on active military duty, that the provisions of the Servicemembers^[*] Civil Relief Act have been followed.

(3) Matters Requiring a Trial.

(a) If the parties do not reach an agreement on any or all issues, a trial shall be held, on motion, as set by the court.

(b) No later than 5 days prior to the trial, the parties shall file a final verified disclosure statement in the record if property matters are in dispute at that trial; or the parties may file an affidavit that there are no changes in circumstance since the completion of the preliminary verified disclosure statement, if filed. The final verified disclosure statement shall contain the contents of the official AOC form, AOC-239, Final Verified Disclosure Statement, which is available for use in compliance with this rule. Further, any affidavit filed in lieu of the final verified disclosure statement shall contain the content of the official AOC form, AOC-239.2, Affidavit of No Change in Circumstances Requiring the Filing of a Final Verified Disclosure Statement, which is also available for use in compliance with this rule.

(c) A copy of final verified disclosure statement or the affidavit in (b) above, together with any supporting documentation, shall be provided to the opposing party 15 days prior to trial unless otherwise ordered by the court.

(4) Evidence and Exhibits.

(a) A court-appointed expert's report shall be in lieu of live testimony, unless either party subpoenas the expert to testify or unless the court orders otherwise. The party who subpoenas the expert shall be responsible for paying the expert's fee for appearance at trial, unless otherwise ordered by the court.

(b) In the trial order, the court shall order parties to exchange the list of exhibits to be submitted at trial. Absent good cause shown, failure to provide an exhibit list may result in the exclusion of such exhibit at trial.

(c) Originals of depositions, interrogatories or requests for admissions, shall not be filed in the court record unless offered as proof. The attorney who noticed the taking of a deposition, or propounded the interrogatories or requests for admissions, shall be the custodian of the record for the originals, and shall present them when directed by the court or at the request of any party.

[(5) Post-Decree Litigation.

A fee of \$50.00 shall be paid by the movant in domestic relations cases reopened after 6 months from the entry of the decree for the purpose of modifying the decree. This does not include motions in 42 U.S.C. Title IV-D cases for child support enforcement. The clerk shall collect any fee upon the filing of the motion, unless the movant files a motion to proceed in forma pauperis.

(a) Reopening for purposes of this rule means any motion for modification of an order filed more than 6 months after entry of the order. A case is considered reopened until all matters in the motion are resolved.

(b) Once a case is reopened and the fee is paid, another fee will not be required unless 6 months or more have elapsed since entry of the order on the motion that re-opened the case.

(c) This fee shall not be required for motions to enforce an order and which are so titled.]

FCRPP 4 Procedures Before the Domestic Relations Commissioner

(1) In jurisdictions having no family court, the circuit judge may appoint a domestic relations commissioner, who shall serve at the pleasure of the court. The court may refer domestic relations matters under KRS Chapter 403 to the domestic relations commissioner, except for domestic violence proceedings, contempt proceedings and

injunctive relief proceedings. Any local rules relating to domestic relations commissioners shall be approved by the Chief Justice and be uniform in all divisions of circuit court within each county of each circuit.

(2) Each domestic relations commissioner shall have been licensed to practice law for at least eight years at the time of appointment, unless otherwise authorized by the Chief Justice, and shall satisfy the annual continuing legal education minimum requirement with domestic relations law education. Additionally, each domestic relations commissioner shall attend a training program, at least once every two years, which focuses on the dynamics and effects of domestic violence including the availability of community resources, victims' services and reporting requirements. Domestic relations commissioners shall not otherwise engage in the practice of domestic relations law.

(3) The domestic relations commissioner shall hear all matters and file a report promptly pursuant to KRS 454.350(2). Testimony may be heard orally before the commissioner or by deposition or interrogatory. All actions involving indigents shall be heard by the commissioner without fee. Proceedings before the commissioner shall be recorded by audio or video and a recording log shall be kept. The domestic relations commissioner shall file the recorded hearings and the recording log in the record with the clerk of the court. Transcriptions shall not be required for any purpose within this Rule.

(4) The domestic relations commissioner shall have the authority to make recommendations to the judge regarding motions for temporary orders of custody, support and maintenance. All temporary and final decrees and orders shall be entered by the court upon review of the recommendations of the domestic relations commissioner as set forth below:

(a) Within 10 days after being served with a copy of the commissioner's recommendations, any party may file written objections thereto with the court. After hearing the court may adopt the recommendations, modify them, or reject them in whole or in part, or may receive further evidence or may recommit them for further hearing.

(b) The circuit court shall sign any recommended temporary or post-decree order within 10 days after the time for filing exceptions has run unless a motion for a hearing on the exceptions has been filed. All temporary recommendations of the domestic relations commissioner which become orders of the court shall be without prejudice and subject to the court's de novo review on final hearing.

(c) If the parties stipulate that the commissioner's findings of fact shall be final, only questions of law arising upon the recommendations shall thereafter be considered.

(d) All final decrees shall be entered by the court within 20 days of submission if no exceptions have been filed. If exceptions have been filed, entry of the final decree shall occur within 10 days of disposition of the exceptions.

(5) For any case assigned, the domestic relations commissioner shall receive a fee of \$60 per hour, assessed at a rate of \$15.00 for each quarter hour or part thereof. Such fees shall be paid through the office of circuit court clerk to the commissioner and shall be due on the fifth working day following the conclusion of the hearing. No more than \$600 shall be assessed in any case regardless of the number and length of hearings unless recommended by the circuit judge and approved by the Chief Justice for extraordinary circumstances shown. If a case is reopened additional fees totaling not more than \$200 may be assessed. No more than \$15 shall be assessed in any uncontested divorce.

(6) The compensation of domestic relations commissioners shall be by fee charged upon the parties, or paid out of any fund or subject matter of the action which is in the custody or control of the circuit court. This compensation shall be paid to the circuit court clerk, who shall issue payment to the commissioner.

(7) All domestic relations commissioners shall be limited in their total personal compensation derived from fees to not more than \$48,000 per annum unless approved by the Chief Justice. Fees in excess of the personal compensation of the commissioner shall be remitted to the Administrative Office of the Courts with the annual accounting for all amounts received.

(8) The Administrative Office of the Courts shall establish audit and accounting standards, prescribe bookkeeping and accounting practices and procedures, and otherwise perform audits and oversee the financial accounts of domestic relations commissioners. A copy of any audit shall be submitted by the Administrative Office of the Courts to the chief judge of the circuit. In the event that the audit reveals an accounting or other irregularity, a copy shall also be submitted to the Chief Justice.

(9) The commissioner shall not retain his or her recommendations as security for his or her compensation. When the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, that party may be subject to civil contempt.

FRCPP 5. Maintenance.

[(1) A motion for temporary maintenance shall be accompanied by copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income, and by an affidavit setting forth movant's monthly expenses and income and the monthly income of the party from whom maintenance is sought.

(2) The notice of hearing accompanying a motion for temporary maintenance shall contain the following statement: "You must file with the Court, at least 24 hours prior to the time of the hearing, a responsive affidavit setting forth your net monthly income and expenses and attach copies of your last three pay stubs or, if self-employed, proof of your current income."

(3)(1) Motions to Establish or Modify Temporary or Permanent Maintenance

(a) All motions to establish or modify temporary or permanent maintenance shall be accompanied by the following:

(i) A statement from movant setting forth the amount of maintenance requested.

(ii) Copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income.

(iii) An affidavit setting forth movant's monthly expenses and income and the monthly income of the party against whom the motion is brought, if known.

(iv) The most recently filed federal and state income tax return.

(v) The notice of hearing accompanying the motion shall contain the following statement "You must file with the Court, at least 24 hours prior to the time of the hearing, copies of your last three pay stubs, or if self-employed, proof of your current income, your most recently filed federal and state income tax returns and an affidavit setting forth your monthly expenses and income."

[(b) The respondent shall file the above financial information with the court and serve it on the opposing party 5 days prior to the hearing.]

(b) A respondent shall file the following information with the court and serve the movant at least 24 hours prior to the hearing:

(i) Copies of the respondent's last three pay stubs or, if self-employed, proof of current income.

(ii) The most recently filed federal and state income tax returns.

(iii) An affidavit setting forth the respondent's monthly expenses and income.

[(c) The notice of hearing accompanying a motion to establish or modify permanent maintenance shall contain the following statement: "You must file with the court, at least 24 hours prior to the time of the hearing, copies of your last three pay stubs, or if self-employed, proof of your current income and by an affidavit setting forth your monthly expenses and income, and the most current federal and state tax returns."]

III. Custody, Shared Parenting, Visitation and Support

FCRPP 6 General Provisions

(1) The provisions of this section shall apply to all actions in which there are disputes regarding custody, shared parenting, visitation or support.

(2) A parent or custodian may move for, or the court may order, one or more of the following, which may be apportioned at the expense of the parents or custodians:

(a) A custody evaluation;

(b) Psychological evaluation(s) of a parent or parents or custodians, or child(ren);

(c) Family counseling;

(d) Mediation;

(e) Appointment of a guardian *ad litem*;

(f) Appointment of a friend of the court or *de facto* friend of the court;

~~[(f)]~~(g) Appointment of such other professional(s) for opinions or advice which the court deems appropriate; or,

~~[(g)]~~(h) Such other action deemed appropriate by the court.

(3) The court or domestic relations commissioner shall conduct a hearing on any motion for temporary custody, time sharing, visitation or child support, within 60 days of the filing of the motion except for good cause stated on the record. Nothing herein prevents the parties from entering into an agreement on these issues.

(4) In all proceedings for the dissolution of marriage in which children of the marriage are minors, or in any custody proceedings, the court may order the parents or custodians and children to participate in counseling or divorce education on a case-by-case basis, which shall be at the expense of the parties.

OFFICIAL COMMENTARY:

Particular attention should be paid to the distinction between a guardian *ad litem* appointed pursuant to subsection (2)(e) and a friend of the court appointed pursuant to subsection (2)(f). A guardian *ad litem* is an attorney advocating for the best interest of the child and should be appointed with that role in mind. Morgan v. Getter, 441 S.W.3d 94 (Ky. 2014). “The GAL should not file reports, testify, make recommendations, or otherwise put his own or her own credibility at issue.” Id. at 114. By contrast, a friend of the court or *de facto* friend of the court is an investigator who advises the court. He or she may make recommendations and file reports, and he or she is subject to cross-examination by the parties’ counsel. Use of the AOC form orders of appointment is required to avoid conflating these two roles and to provide clarity to appointed persons, counsel, and parties.

FCRPP 7 Custody

(1) Unless otherwise ordered by the court, in any action in which the permanent custody or time-sharing of the child(ren) is in issue, each party shall, not less than 14 days prior to the day set for hearing, provide the other party(ies) with a list of the names and addresses of every person and a short statement of the subject of their testimony, other than a parent or the child(ren) of the parents, expected to be called as a witness, as well as a list of exhibits to be entered.

(2) Relocation.

[(a) Before a joint custodian seeks to relocate, written notice shall be filed with the court and notice shall be served on the non-relocating joint custodian. Either party may file a motion for change of custody or time-sharing within 20 days of service of the notice if the custodians are not in agreement; or, the parties shall file an agreed order if the time sharing arrangement is modified by agreement. See Pennington v. Marcum, 266 S.W.3d 759 (Ky. 2008) and Wilson v. Messinger, 840 S.W.2d 203 (Ky.1992).

(b) Before a sole custodian seeks to relocate, written notice shall be filed with the court and notice shall be served on the non-custodial parent. If the court ordered visitation is affected by the relocation, the non-custodial parent may file a motion contesting the change in visitation within 20 days of service of the notice.]

(a) Joint Custody.

(i) Before a joint custodian seeks to relocate, written notice shall be filed with the court and served on the non-relocating joint custodian.

(ii) The written notice shall include the proposed relocation address, date of relocation and the effect, if any, of relocation on court-ordered time-sharing.

(iii) If court-ordered time-sharing is affected by the proposed relocation, within 20 days of the filing of the notice, the relocating joint custodian shall file an agreed order or a motion to modify the existing time-sharing order.

(iv) Within 20 days of service of the notice, the non-relocating joint custodian may file a motion to modify custody or time-sharing.

(b) Sole Custody

(i) Before a sole custodian seeks to relocate, written notice shall be filed with the court and served on the non-custodial parent.

(ii) The written notice shall include the proposed relocation address, date of relocation and the effect, if any, of relocation on court-ordered time-sharing.

(iii) If the court-ordered time-sharing is affected by the relocation, within 20 days of service of the notice, the non-custodial parent may file a motion contesting the change in time-sharing.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

Pursuant to KRS 403.770, if the relocating custodian has an active Emergency Protective Order or Domestic Violence Order against the other parent or custodian, the relocating custodian must not be required to disclose to the other party the relocation destination. The court and clerks will strictly comply with the statutory mandates set forth in KRS 403.770. If the domestic violence action is not pending in the same circuit, the court may require the relocating custodian to disclose the relocation destination provided only if the location is filed under seal, with strict confidentiality maintained by the court and clerk, and the location is not disclosed to the opposing party.

FCRPP 8 Time-Sharing/Visitation

(1) A parent shall be entitled to time-sharing/visitation as ordered by the court, which may be in accordance with the Model Time-Sharing/Visitation Guidelines, unless otherwise agreed to by the parties or ordered by the court.

(2) Model Time-Sharing/Visitation Guidelines are set forth in Appendix A to these Rules or other guidelines may be applied and set forth in local rules.

FCRPP 9 Support

(1) Once support has been set by the court, it shall continue in full force and effect unless modified by the court, or ended by operation of law.

(2) An order directing the payment of child support shall be entered utilizing the AOC-152, Uniform Child Support Order and/or Wage/Income Withholding Order which is the form prescribed by the Administrative Office of the Courts pursuant to KRS 205.713 and KRS 205.802. This form shall be located on the Court of Justice website and shall include the following:

(a) The amount and frequency of the support payments;

(b) That the payment shall be paid

(i) By wage/income withholding, to begin immediately; or,

(ii) If wage/income withholding is not ordered to begin immediately for good cause shown, as ordered by the court and as directed in KRS 403.215; or,

(iii) According to a written agreement reached between both parties which provides for an alternative arrangement to wage/income withholding.

(c) In non-IV-D cases the federal Income Withholding~~[[FN1]]~~ for Support (IWO) form OMB 0970-0154, and in IV-D cases the state CS-89, shall be utilized to notify the employer/income withholder of any wage/income withholding ordered by the court.

(d) The party responsible for medical and other ordered expenses of the child(ren); and,

(e) The social security numbers of the parties and child(ren), CR 7.03 notwithstanding.

(3) Notice of any wage/income withholding shall be served upon the employer and the employee as follows:

(a) In non-IV-D cases, the OMB 0970-0154 shall be accompanied by the underlying AOC-152.

(b) In IV-D cases, the CS-89 shall be utilized.

(4) Motions to Establish or Modify Child Support.

(a) A motion to establish or modify child support shall be accompanied by the following:

~~[(1)]~~(i) A completed child support guidelines worksheet with movant's portion completed.

~~[(2)]~~(ii) Copies of the movant's last three pay stubs or, if movant is self-employed, proof of the movant's current income.

~~[(3)]~~(iii) The most recently filed federal and state income tax returns.

~~[(4)]~~(iv) Verification of the cost of health insurance for the child(ren) only.

~~[(5)]~~(v) A notice of hearing accompanying a motion for child support which shall contain the following statement: "You must file with the Court, at least 24 hours prior to the time of the hearing, a completed child support guidelines worksheet and copies of your last three pay stubs or, if self-employed, proof of your current income and the most current federal and state tax returns."

(b) [The responding party is to similarly file this financial information at least 24 hours prior to the hearing.] A respondent shall file the following information with the court and serve the movant at least 24 hours prior to the hearing:

(i) A completed child support worksheet.

(ii) Copies of the respondent's last three pay stubs or, if self-employed, proof of current income.

(iii) The most recently filed federal and state income tax returns.

(iv) Verification of the cost of health insurance for the child(ren) only.

(c) [All parties shall exchange said information 10 days prior to the hearing.] In addition, in cases that are Title IV-D cases, counsel shall certify, prior to the hearing being held, that reasonable efforts were made to resolve all the issues in dispute.

[(d) In addition, counsel shall certify, prior to the hearing being held, that reasonable efforts were made to resolve all the issues in dispute.]

IV. Domestic Violence and Interpersonal Protective Orders

FCRPP 10 Issuance of Summons

(1) [If an emergency protective order is not issued due to an insufficient relationship as identified in KRS 403.720(2) or (4), or for failure to state an act or threat of domestic violence between the parties, the finding of the insufficient relationship or failure to state an act or threat of domestic violence shall be noted on the petition by the judge, and no summons shall be issued.] If an emergency protective order or temporary interpersonal protective order is not issued due to an insufficient relationship as identified in KRS 403.720(2) or (5), or KRS 456.030(1) or for failure to state an act or threat of domestic violence, dating violence and abuse, stalking or sexual assault between the parties, the finding of the insufficient relationship or failure to state an act or threat of domestic violence, dating violence and abuse, stalking or sexual assault shall be noted on the petition by the judge, and no summons shall be issued.

(2) If the relationship is one recognized under KRS 403.720(2) or [(4)](5) and there is a finding of domestic violence and abuse, dating violence and abuse, stalking or sexual assault and a finding of immediate and present danger, an emergency protective order or temporary interpersonal protective order shall be issued.

(3) [If there is no finding of an immediate and present danger of domestic violence and abuse, when the relationship is one recognized under KRS 403.720(2) or (4), but the court determines that domestic violence and abuse exists, a summons shall be issued and a hearing shall be held to determine if a domestic violence order should be issued. Any finding at the hearing shall constitute an appealable order.] If there is no finding of an immediate and present danger of domestic violence and abuse, dating violence and abuse, stalking or sexual assault when the relationship is one recognized under KRS 403.720(2) or (5), or KRS 456.030(1) but the court determines that domestic violence and abuse, dating violence and abuse, stalking or sexual assault exists, a summons shall be issued and a hearing shall be held to determine if a domestic violence order or

interpersonal protective order should be issued. Any finding at the hearing shall constitute an appealable order.

Commentary: This Rule is about civil protection orders and not about the automatic IPO issued post-conviction in criminal cases.

(4) If a summons is issued for a minor child pursuant to KRS 403.730, service shall be in the manner prescribed in CR 4.04(3). If the minor child has no guardian or committee, a guardian *ad litem* shall be appointed pursuant to CR 17.03(2) and KRS 387.305.

FCRPP 11 Contempt Proceedings

(1) [No petitioner shall be held in contempt for failure to appear at a domestic violence hearing or for failing to prosecute a civil or criminal contempt violation of a protective order except for good cause shown on the record. Failure to appear may result in denial of the petition.] No petitioner shall be held in contempt for failure to appear at a domestic violence or interpersonal protective order hearing or for failing to prosecute a civil or criminal contempt violation of a protective order except for good cause shown on the record. Failure to appear may result in denial of the petition.

(2) [When the court conducts contempt proceedings in domestic violence actions, the party subject to contempt shall be represented by counsel, unless waived, and an attorney shall be appointed by the court if the party qualifies as an indigent.] When the court conducts contempt proceedings in domestic violence or interpersonal protective order actions, the party subject to contempt shall be represented by counsel, unless waived, and an attorney shall be appointed by the court if the party qualifies as an indigent.

FCRPP 12 Reissuance of Emergency Protective Order or Temporary Interpersonal Protective Order Upon Transfer to Another Circuit

When the local [domestic violence] protective order protocol requires that a case be transferred to another circuit due to a pending dissolution case, any active [an] emergency protective order or active temporary interpersonal protective order shall continue and the summons shall be re-issued by the initiating court, pursuant to KRS 403.740(4), for a period not to exceed 14 days if service has not been made on the adverse party by the date of transfer, or as the court determines is necessary for the protection of the petitioner. Thereafter, reissuance of the summons shall occur as needed in the court of transfer.

[FCRPP 13 Domestic Violence Protocols

(1) Domestic violence cases shall be conducted according to the local domestic violence protocol.

- (2)** The court shall not limit or restrict a victim's access to seek a protective order for domestic violence.
- (3)** The court shall provide 24-hour access to protection from domestic violence.
- (4)** Domestic violence cases shall retain the domestic violence case file number even if heard with another matter.
- (5)** The court shall establish schedules for domestic violence hearings and shall provide them to anyone authorized to verify domestic violence petitions.
- (6)** The court shall inform the respondent regarding the purchase of a firearm, and the surrender of same, in compliance with 18 U.S.C. Section 922(g)(8), during the pendency of an emergency protective order or domestic violence order, and shall inform the respondent regarding the confiscation, retention and return of firearms.】

V. Paternity Actions

[FCRPP 14 Paternity Reopenings

- (1)** A fee of \$50.00 shall be paid by the movant in paternity cases reopened after 6 months from the entry of the paternity judgment for the purpose of modifying any support, custody or visitation ordered. This does not include motions in 42 U.S.C. Title IV-D cases for child support enforcement. The clerk shall collect any fee upon the filing of the motion, unless the movant files a motion to proceed in forma pauperis.
 - (a) Reopening for purposes of this rule means any motion for modification of an order filed more than 6 months after entry of the order. A case is considered reopened until all matters in the motion are resolved.
 - (b) Once a case is reopened and the fee is paid, another fee will not be required unless 6 months or more have elapsed since entry of the order on the motion that reopened the case.
 - (c) This fee shall not be required for motions to enforce an order and which are so titled.
- (2)** Nothing in this Rule shall preclude the district court from declining jurisdiction on custody and visitation and referring the action to the circuit court pursuant to KRS 406.051(2); nor shall this Rule preclude an action for custody, visitation or support from being filed in the circuit court by a party after the entry of a judgment of paternity in district court. In either event the appropriate filing fee shall be paid by the moving party, unless the movant/petitioner files a motion to proceed in forma pauperis.
- (3)** In family court jurisdictions nothing in this Rule shall preclude the family court judge from ordering the custody, visitation and support matters in a paternity action be initiated in a circuit action. In such instance, a new circuit civil petition shall be filed by

the movant/petitioner and the appropriate filing fee shall be paid unless in forma pauperis status is granted by the court.]]

FCRPP [15](13) Genetic Testing

When paternity is an issue in any action, the court may order the mother, child and the putative father to submit to genetic tests as follows:

- (1) In a case in which paternity is denied or in which the parties request genetic testing, on motion made by any party, a pretrial order shall be entered by the court forthwith which requires both parties and the child to submit to genetic tests in accordance with KRS 406.081 or 406.091 unless an agreed order is entered.
- (2) Within 30 days of receipt of the genetic report, the petitioner shall file the original report with the court in support of a motion to dismiss, a motion for trial or a motion for summary judgment. This does not preclude prehearing conferencing in the interim which may extend the 30 days by agreement or resolve the issues.
- (3) In those cases in which the genetic test report excludes the defendant from the paternity of the child, the court, after the expiration of 30 days from the date of the filing of the exclusionary report, shall enter an order of dismissal in favor of the defendant unless a motion for additional testing pursuant to KRS 406.091 is filed prior to the expiration of the 30 days.

VI. Post-Decree and Post-Final Order

FCRPP 14 Post-Decree and Post-Final Order Service

All motions filed more than six months after the entry of a Decree of Dissolution or a final order shall be served on the party at the last known address and upon the attorney of record, if any, by ordinary mail.

[VI.](VII.) Dependency, Neglect or Abuse

FCRPP [16](15) Orders in Dependency, Neglect or Abuse Actions

To the extent not otherwise specified, any order entered in a dependency or neglect or abuse action shall be on the appropriate Administrative Office of the Courts forms.

FCRPP [17](16) Notice in Dependency, Neglect or Abuse Actions

(1) Judicial Notice. In making any determinations with regard to a child in a dependency or neglect or abuse action, the court may consider the findings of fact and court orders from any other court proceeding in any other court file involving the child or the child's parents or the person exercising custodial control or supervision, if the court is aware of

such proceedings. To the extent that the court relies on such, the court shall include a copy of that material in the record.

(2) Notice and Opportunity to be Heard. Prior to any review or permanency hearing, the state child welfare agency shall inform the court of the name and address of the foster parents, pre-adoptive parents and any relatives who are providing care for the child. The clerk shall provide notice of any review or permanency hearing to all parties and to the child's foster parents, pre-adoptive parents, and any relatives who are providing care for the child. The foster parents, pre-adoptive parents or any relative who is providing care for the child shall have an opportunity to be heard and may be subject to cross examination but shall not be designated as a party to such a proceeding solely on the basis of such notice and right to be heard. If the parent/custodian against whom a petition has been filed is present when the permanent custody hearing is set, that parent shall be given written notice while in court, which is sufficient notice under this rule.

FCRPP [18](17) Service

(1) A copy of the petition and summons, and an emergency custody order, if any, shall be served upon parents or persons exercising custodial control or supervision or who have been awarded legal custody by a court or claims a right to legal custody under the law of this state. It may be served by any person authorized to serve process except the state child protective service agency.

(2) A notice and statement of the rights and a blank affidavit of indigency, which contain the contents of the official AOC forms, AOC-DNA-2.2, Notice of Emergency Removal, and AOC-DNA-11, Financial Statement, Affidavit of Indigence, Request for Counsel and Order, shall be served with the emergency custody order. The official AOC forms are available for use in compliance with this rule.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

If a permanent custody motion is filed within a Dependency, Neglect and Abuse (DNA) action pursuant to KRS 620.027, the movant shall ensure that personal service of the permanent custody motion has been perfected upon both parents and any other legal custodian, except as otherwise directed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Personal service shall be perfected in accordance with the Kentucky Rules of Civil Procedure, CR 4, et. seq. If said service has not been properly perfected in the DNA action, the court should deny the motion and require the movant to file a proper petition for child custody pursuant to KRS Chapter 403.

FCRPP [19](18) Emergency Custody Orders in Dependency, Neglect or Abuse Actions

(1) Any request for an emergency custody order in a dependency, neglect or abuse case shall be in writing and shall be accompanied by an affidavit for emergency custody order which contains the contents of the official AOC form, AOC-DNA-2.1, Affidavit for Emergency Custody Order, and which alleges dependency, or abuse or neglect. The affidavit shall be presented to the judge with any other documentation presented at the time of the filing of the request. The official AOC form may be utilized for compliance with this rule.

(2) The person seeking the emergency custody order shall indicate on the affidavit whether there are other proceedings pending, or any orders of custody, related to the child in the Commonwealth or any other state.

(3) The emergency custody order shall contain the contents of the official AOC form, AOC-DNA-2, Emergency Custody Order, which is available for use in compliance with this rule. In no event shall a child be removed pursuant to KRS 620.060 only on a verbal order.

(a) Upon issuance of an emergency custody order by the judge, the person seeking the emergency custody order shall file the emergency custody order and the affidavit with the clerk no later than the close of the next work day and the clerk shall assign a case number.

(b) If not filed with the emergency custody order, a petition shall be filed with the clerk within 72 hours of taking the child into custody in the same case file as the emergency custody order and affidavit.

(c) The court may, after issuing an emergency custody order, transfer the case for forum non conveniens to the county where the dependency, abuse or neglect is alleged to have occurred and shall notify the court to which the case is being transferred, upon issuance of the transfer order.

FCRPP [20](19) Petition

(1) A petition pursuant to KRS Chapter 620 shall contain the contents of the official AOC form, AOC-DNA-1, Dependency Neglect or Abuse Petition, which is available for use in compliance with this rule. In proceedings involving siblings, separate petitions shall be filed for each child and individual case numbers shall be assigned by the clerk of the court, but all siblings' files shall be assigned to the same judge.

(2) When a petition is filed a copy shall be mailed or provided by the clerk to the parents or other person exercising custodial control or supervision, the state child protective service agency, the county attorney, any guardian *ad litem*, and any counsel of record, no later than the business day following the filing of the petition.

FCRPP [21](20) Notice of Temporary Removal Hearing

(1) The clerk shall provide notification of the temporary removal hearing to the parents or other person exercising custodial control or supervision, county attorney, the state child protective service agency, any guardian *ad litem* (or by statute, counsel for the child), and any counsel of record.

(2) The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-3, Order-Temporary Removal Hearing, which is available for use in compliance with this rule.

FCRPP [22](21) Orders from Hearings

(1) Adjudication Hearing. The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-4, Order-Adjudication Hearing, which is available for use in compliance with this rule.

(2) Disposition Hearing. The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-5, Order-Disposition Hearing, which is available for use in compliance with this rule.

(3) Permanency Hearing. The order entered at the hearing shall contain the contents of the official AOC form, AOC-DNA-6, Order-Disposition Hearing, which is available for use in compliance with this rule.

(4) Permanent Custody Order. Any order of permanent custody entered pursuant to KRS 620.027 shall contain the contents of the official AOC form, AOC-DNA-9, Order-Permanent Custody, which is available for use in compliance with this rule.

(5) Verbal Approval or Stamped Signatures. No order in a dependency, neglect and abuse action may be entered on verbal approval or stamped signature.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

Faxed or scanned original signatures and encrypted or otherwise secure digital signatures authorized by the Supreme Court have been deemed to be acceptable methods of signature for purposes of these Rules.

FCRPP [23](22) Continuances

(1) If the court grants an extension of time or a continuance for any hearing other than the annual permanency hearing, it shall make written or oral findings on the record that the continuance is necessary in the best interest of the child, for discovery or presentation of evidence or witnesses, to protect the rights of a party, or for other good cause shown.

(2) The annual permanency review hearing shall be conducted at least annually and shall not be continued beyond 12 months from the placement of the child in foster care for any reason, including good cause.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

Pursuant to 45 C.F.R. 1356.21(b)(2)(i), the state child welfare agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within 12 months of the date the child is considered to have entered foster care and at least every 12 months thereafter while the child is in foster care. Under 45 C.F.R. 1356.21(b)(2)(ii), if such a judicial determination is not made, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made.

FCRPP [24](23) Dismissal

Once filed, a petition shall be dismissed only upon court order.

FCRPP [25](24) Transfer

Cases shall not be transferred from one county to another prior to adjudication except on a specific finding of improper venue or forum nonconveniens.

FCRPP [26](25) Appearances

Any attorney appearing on behalf of a party in a dependency, neglect or abuse action shall file a written entry of appearance unless an order appointing the attorney as guardian *ad litem* (or by statute, counsel for the child), or court-appointed counsel has been entered. An attorney shall not withdraw from representation except upon motion to withdraw granted by the court.

FCRPP [27](26) Records and Transcripts

(1) An electronic or stenographic record of interviews with children, including a recording of any in-camera proceedings, shall be filed under seal with the clerk and may be made available to the parties or their counsel on motion and written order of the court.

(2) In courts that have more than one county in their jurisdiction any recordings made in a county other than where the action is filed shall be delivered to the clerk of the county where the action is filed by the court ordering the hearing.

FCRPP [28](27) Reports

Any dispositional report shall be filed, and a copy, electronic or otherwise, provided to the court, the guardian *ad litem*, pro se litigants, and all counsel of record, three days prior to a dispositional hearing and shall contain the contents of the official AOC form, AOC-DNA-12, Dependency, Neglect or Abuse Dispositional Report, which is available for use in compliance with this rule.

FCRPP [29](28) Case Plan and Case Progress Reports

The court shall require the following to be filed in the court record and provided to all parties:

- (1) The out of home case plan;
- (2) Any visitation agreement for the case plan or the case permanency plan; and,
- (3) Any prevention plan or safety plan developed by the child protective service agency.
- (4) The state child welfare agency shall provide the names and addresses of the child's foster parents, pre-adoptive parents or relatives providing care to the child, court appointed special advocate, and foster care review board member assigned to the case with the case permanency plan or case progress report filed with the court on a form prescribed by the Administrative Office of the Courts.

FCRPP [30](29) Reviews

(1) Permanency Progress Review. In addition to the annual permanency hearing mandated by KRS 610.125, the court shall conduct a permanency progress review no later than 6 months after a child is placed in foster care, in the home of a non-custodial parent, or other person or agency, when that child was sixteen years of age or younger at the time of the filing of a dependency, neglect or abuse petition.

(2) Independent Living Review. In addition to the permanent placement review and the annual permanency hearing, and when the child remains in foster care or committed to the state child welfare agency, the court shall conduct an independent living review at least 6 months prior to the child turning 18 years of age to ensure that training on independent living and other appropriate services have been included in the case plan and are being provided to the child.

SUPREME COURT STANDING COMMITTEE ON THE FCRPP (2012) COMMENTARY

With respect to FCRPP 30(1), if a permanent custody motion is filed within a Dependency, Neglect or Abuse (DNA) action pursuant to KRS 620.027, the movant shall ensure that personal service (of the DNA action) has been perfected upon both

parents and any other legal custodian, except as otherwise directed by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). Personal service shall be perfected in accordance with the Kentucky Rules of Civil Procedure, CR 4, et. seq. If said service has not been properly perfected in the DNA action, the court should deny the motion and require the movant to file a proper petition for child custody pursuant to KRS Chapter 403.

FCRPP [31](30) New Action

Any new allegation or request for removal after a child has achieved permanency shall be filed as a new action.

[VII.](VIII.) Adoption and Termination of Parental Rights

FCRPP [32](31) Venue and Petition

(1) Venue. When filed in the same county in which a KRS Chapter 620 proceeding has been held, a proceeding under KRS Chapter 625 shall be assigned to the same family court division that heard the KRS Chapter 620 action. Otherwise, venue shall proceed according to KRS 625.050(4).

(2) Petition.

(a) A separate petition shall be filed for each child and individual case numbers shall be assigned by the clerk of the court in proceedings filed pursuant to KRS Chapters 199 and 625, and in the case of siblings, shall be heard by the same judge.

(b) Every petition in an adoption or termination of parental rights action shall include the case number of any underlying juvenile case, specifically dependency, neglect or abuse or termination of parental rights cases, and shall include the name of any guardian *ad litem* (or by statute, counsel for the child) previously appointed.

FCRPP [33](32) Adoption

(1) No request for final hearing shall be made prior to the filing of the state child protective service agency report pursuant to KRS 199.510[, and the guardian *ad litem* report, if any, pursuant to KRS 199.515].

(2) In the event of an uncontested adoption, a hearing shall be held within 60 days of the filing of a request for a final hearing.

(3) A continuance of any final hearing date shall not be granted except upon good cause shown. Annual permanency review hearings shall continue to be held in any dependency, neglect and abuse action as required by FCRPP [23](22) until finalization of the adoption.

FCRPP [34](33) Involuntary Termination

(1) Immediately upon the filing of any petition for involuntary termination of parental rights, the petitioner shall obtain a pretrial date. In the event the parents are not served prior to the pretrial date, the pretrial date shall be used as a case status review to expedite the proceeding.

(2) A continuance of any final hearing date shall not be granted except upon good cause shown. The annual permanency review hearings shall continue to be held in any dependency, neglect and abuse action as required by FCRPP [23](22) until permanency is achieved.

FCRPP [35](34) Orders Terminating Parental Rights

The clerk of the court shall send two certified copies of the order terminating parental rights to the state child protective agency. The prospective adoptive parent or his or her attorney, if any, may obtain a certified copy of the order terminating parental rights from the state child protective agency to attach to the adoption petition.

FCRPP [36](35) Post-Termination of Parental Rights Review

If an order terminating parental rights is entered, a copy of the order shall also be certified to the record in the underlying dependency, neglect and abuse case which shall be identified in the order. The clerk of the court in the underlying dependency, neglect and abuse case shall docket the matter for a review hearing within 90 days from the date of the entry of the order of termination of parental rights and shall docket the matter as directed by the court at least annually thereafter until permanency is achieved.

IX. Appendix A

Appendix A Model Time-Sharing Visitation Guidelines

Model Time-Sharing/Visitation Guidelines

The following schedules are suggested as **guidelines** for the parents and the court in establishing time-sharing/visitation schedules. Each case will present unique facts or circumstances which shall be considered by the court in establishing a time-sharing/visitation schedule and **the final schedule established by the court or agreed to by the parents may or may not be what these guidelines suggest.**

(1) The time-sharing/visitation schedule set by the court for holidays, school breaks and summer break should control over regularly scheduled time-sharing/visitation time, even if this allows successive time-sharing/visitation periods.

(2) The parent exercising time-sharing/visitation should be responsible for timely picking up the child(ren) at the beginning of the time-sharing/visitation period and returning the child(ren) in a timely manner at the end of the time-sharing/visitation period.

(3) Times in a time-sharing/visitation schedule should be set in the time zone where the child primarily resides.

(4) For time-sharing/visitation times pertaining to school holidays, whether in a formal school or home-schooled, the school holidays where the child(ren) primarily resides should apply.

(5) Each parent should provide to the other parent contact numbers and addresses (unless a domestic violence order is in effect) where the child(ren) can be located during their scheduled time-sharing/visitation time.

(6) The parent exercising time-sharing/visitation should be given a minimum of every other weekend as time-sharing/visitation time with the child(ren) and one midweek overnight time-sharing/visitation. The parent having such time-sharing/visitation should be responsible for delivering the child(ren) to school, child care, or the other parent's home as specifically ordered by the court or agreed to by the parents.

(7) Holidays.

(a) If a holiday is celebrated on a Monday following a parent's regularly scheduled time-sharing/visitation, then that parent should be permitted to extend parenting time until 6:00 p.m. on the holiday, unless the parents agree otherwise.

(b) Other holidays.

(i) Parent exercising time-sharing/visitation.

(1) During the first full year after divorce/custody proceedings have been filed, the non-residential parent should have time-sharing/visitation scheduled as follows:

(a) New Year's Day and July 4th from 8:00 a.m. until 6:00 p.m.

(b) Thanksgiving, beginning at 6:00 p.m. the day school ends until 3:00 p. m. Thanksgiving Day.

(c) Christmas/Winter Break, beginning at 6:00 p.m. the day school ends until noon on December 25.

(d) Holidays not listed that are of special interest to the family should be assigned to the non-residential parent in time amounts similar to those in a), b) and c) above.

(2) Holiday time not scheduled above to the parent exercising time-sharing/visitation should be with the other parent.

(3) Mother's Day and Father's Day, regardless of any conflict with the above proposed schedule, should be spent with the appropriate parent from 8:00 a.m. until 6:00 p.m.

(4) Fall Break or Spring Break, as allowed by the child(ren)'s school calendar, should be scheduled for the parent with whom the child(ren) primarily resides in the first full year after the divorce/custody proceedings are filed from 6:00 p.m. the day school ends until 6:00 p.m. the following Friday. If school breaks are longer than one week due to the school schedule, the parent with whom the child(ren) primarily resides should be scheduled for the first half of the break and the other parent should be scheduled for the last half.

(5) Summer Break should be scheduled to allow the parent exercising time-sharing/visitation a minimum of two periods of two consecutive weeks during the Summer Break. Each parent should provide the time periods he or she desires to the other parent before the end of the school year, or at least 60 days in advance of the requested time. If a child(ren) must attend summer school in order to pass to the next grade, summer time-sharing/visitation should not prevent school time.

(6) Birthdays: Unless the birthday falls on a regularly scheduled time-sharing/visitation day, the parent exercising time-sharing/visitation should be scheduled for birthday time from 5:00 p.m. until 8:00 p.m. If it is a regular day of the parent exercising time-sharing/visitation where the child(ren) does not primarily reside, the other parent should have birthday time from 5:00 p.m. until 8:00 p.m.

(ii) Alternating years: For each year thereafter, the time-sharing/visitation set out above should alternate between the parent with whom the child(ren) primarily resides and the parent exercising time-sharing/visitation.

(8) Waiting/Tardiness/Cancellations.

(a) In the event either parent will be more than 30 minutes late, due to reasonable unforeseen circumstances, to pick up the child(ren), he or she should provide direct notice to the other parent or a designated third party and make suitable arrangements for exchange of the child(ren).

(b) If time-sharing/visitation is missed through no fault of the parent, and reasonable notice has been given, that time should be made up, if reasonable to do so.

(c) If the child(ren) is ill, the parent who has the child should give 24-hour notice, if possible, to allow for appropriate plans to be made.

(9) Transportation: The parents should transport the child(ren) in a safe manner, which includes utilizing the appropriate child restraint systems and not driving under the influence of intoxicants.